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Paper No. 15
AFD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re John A. Van Den Bosch Company

Serial No. 75/533,640

Terence J. Linn of Van Dyke, Gardner, Linn & Buckhart, LLP
for John A. Van Den Bosch Company.

Karen M. Strzyz, Trademark Examining Attorney, Law Office
111 (Craig Taylor, Managing Attorney).

Before Cissel, Bottorff and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On August 10, 1998, John A. Van Den Bosch Company
(applicant) filed an intent-to-use application for the mark
CANINE COMPLETE ("CANINE" disclaimed) for "dog food" in
International Class 31.¹ The Examining Attorney refused to
register the mark on the ground that the term CANINE
COMPLETE is merely descriptive of applicant's goods under
Section 2(e)(1) of the Trademark Act. 15 U.S.C. §

1052(e)(1). After the refusal was made final, this appeal followed. Applicant and the Examining Attorney have submitted briefs. An oral argument was not requested.

Because we agree with the well-reasoned position of the Examining Attorney, we affirm her refusal to register the mark under Section 2(e)(1).

The Examining Attorney has submitted a significant amount of evidence to show that "complete" is a term commonly used to describe dog food. A sampling of the evidence is set out below:

All major pet foods are complete and balanced for the appropriate life stage. Denver Post, Dec. 12, 1999 p. G-06.

You also can make your own low-calorie dog food at home. Hill's offers a listing of nutritionally complete pet food recipes. Dallas Morning News, June 5, 1999, p. 9c.

By law, all pet foods that are "complete and balanced" must ensure that the pet receives all the nutrients it requires. Star Tribune, Jan. 31, 1999, p.10E.

Either chemical analysis or feeding trials may be used to verify a pet food as "nutritionally complete." Lewiston Morning News, Feb. 9, 1998, p. 5A.

By adding dried meat scraps to cereal by-products, manufacturers subsequently made pet foods that approached the "complete and balanced" notion that appears on today's manufactured foods. Dayton Daily News, Mar. 20, 1997, p. 8.

¹ Serial No. 75/533,640. On June 24, 1999, applicant filed an acceptable Amendment to Allege Use.

Many pet foods are complete and balanced with adequate amounts of vitamins, making supplements unnecessary. Times Union, Nov. 19, 1994, p. D4.

Sellers' group endorses pet food formulas that meet its definition of "complete and balanced." Los Angeles Times, Sep. 15, 1991, p. 32.

In order for a pet food to be labeled as "nutritionally complete" it has to have a minimum of vitamins and minerals. Lewiston Morning Tribune, Oct. 8, 1990, p. 11A.

How do we know if we're giving our pets the balanced diet they need? One way is to use a commercial pet food whose label indicates that it's nutritionally complete. Washington Post, Nov. 30, 1982, p. D5.

A good quality commercial pet food labeled complete, balanced or nutritionally correct will supply all the protein, fats, minerals and vitamins needed for growth, proper development and maintenance of healthy pets. St. Louis Post-Dispatch, May 4, 1992, p. 9.

In addition, the Examining Attorney has submitted evidence to show that commercial dog food is often described as being "complete" (See PETSMART.COM printouts):

A natural choice for complete and balanced nutrition for normally active dogs. (1st printout, p. 2)

Real lamb and rice in a great tasting, complete and balanced formula. (2nd printout, p. 2)

Nutritionally complete for active dogs. (3rd printout, p. 1)

Provides complete nutrition for dogs. (4th printout, p. 1)

Unique, high quality canned entrees provide complete and balanced nutrition for your dog. (5th printout, p. 2)

100% complete and balanced nutrition with extra protein for growing puppies. (5th printout, p. 3)

Lamb Meal & Rice Select canine diet is a nutritionally complete balanced diet. (6th printout, p. 1).

Applicant responded to the Examining Attorney's refusal by arguing that its mark is not descriptive, that CANINE COMPLETE is incongruous requiring a multistep reasoning process in order to deduce any descriptive significance, and that the common letter "C" in both words of the mark would cause potential consumers to view the mark as a unitary whole. In addition, applicant cites registrations for other goods and one for pet food to support its argument that CANINE COMPLETE is not descriptive for dog food. Applicant's arguments are not persuasive.

A mark is merely descriptive if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods. In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 525, 205 USPQ 505, 507 (CCPA 1980); In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). To be "merely descriptive," a term need only describe a single quality or property of the goods. Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959). Descriptiveness of a mark is not

considered in the abstract, but in relation to the particular goods or services for which registration is sought. In re Abcor Development Corp., 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978).

Here, the Examining Attorney has demonstrated that "complete" is a word commonly used to describe pet food and dog food. Applicant, by disclaiming the exclusive right to use CANINE, apart from the mark as shown, has admitted that CANINE is merely descriptive of applicant's goods. See, e.g., Quaker Oil Corp. v. Quaker Oil Refining Corp., 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972).² At an absolute minimum, the Examining Attorney has established that the mark "Canine Complete" would describe at least one characteristic of the goods, i.e. that applicant's pet food is nutritionally complete food for dogs.

One of applicant's main arguments in response to the Examining Attorney's descriptiveness refusal is that the

² The evidence of record (PETSMART.COM) also includes such references as:

Lamb Meal & Rice Select canine diet is a nutritionally complete balanced diet. (6th printout p. 1).

Waltham Formula Adult Conditioning Canine Diet. (6th printout p. 1).

Science Diet Lamb and Rice Canine Growth Formula. (4th printout p. 1).

Office has registered marks without disclaimers of "complete" for other goods. However, a close look at applicant's cited registrations demonstrates that they do not support its argument that "complete" is somehow not descriptive for dog food. The Examining Attorney has shown that the term "complete" is a commonly used term referring to dog or pet food. The fact that for other goods the term "complete" might not be descriptive and therefore has been registered without a disclaimer is hardly surprising. Our focus here is on whether the term "complete" is descriptive for pet food, specifically dog food. Assuming arguendo that the term "complete" might not be descriptive for, e.g., furnishing retirement account information, computer programs, or providing seminars for developing negotiating skills, this point hardly supports applicant's argument that the same term is not descriptive for pet food.³

³ The Examining Attorney has put in registrations to show that the Office has been consistent in requiring a disclaimer of the term "complete" for pet food. Applicant's lone cited exception is readily distinguishable on its face (COMPLETE ADVANTAGE). We are not persuaded that the Office's prior disclaimer practice is particularly persuasive evidence either for or against the registration of a mark. See In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court"). It would be incongruous to continue to refuse to register a mark that the applicant has demonstrated is suggestive

Finally, we acknowledge applicant's argument that the words CANINE and COMPLETE start with the same letter. However, we are not persuaded that in this case that such alliteration overcomes the strong evidence of descriptiveness submitted by the Examining Attorney. In re Lean Line, Inc., 229 USPQ 781, 782 (TTAB 1986) ("[T]here is nothing in the record to suggest that the mere fact that both words which form the mark begin with the letter 'L' would cause purchasers to miss the merely descriptive significance of the term 'LEAN' or consider the entire mark to be a unitary expression"). Regarding applicant's argument that the mark CANINE COMPLETE is somehow incongruous, we simply disagree. When the mark CANINE COMPLETE is viewed, as it must be in this case, in relation to dog food, we find that it immediately informs consumers of a characteristic of the goods, i.e., that the goods are nutritionally complete dog food.

Decision: The refusal to register is affirmed.

because of prior disclaimers of the term or to continue to pass applications to publication despite evidence of descriptiveness simply because other Examining Attorneys had not required a disclaimer of the term. Such a practice would conflict with the requirement that the Office "must decide each case on its own merits." Id.

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